

Jason D. Jones
David Donahue
Shelby P. Rokito
FROSS ZELNICK LEHRMAN & ZISSU, P.C.
151 W. 42nd Street, Floor 17
New York, New York 10036
(212) 813-5900

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ATLUS CO., LTD,

Plaintiff,

v.

Case No.: 1:21-cv-11102 (ALC)(JLC)

JOHN DOE 1 D/B/A REKUIEMU GAMES; and
JOHN DOE 2 D/B/A COMP_HACK,

Defendants.

**DECLARATION OF SHELBY P. ROKITO IN SUPPORT OF MOTION FOR LEAVE
TO SERVE THIRD-PARTY SUBPOENAS PRIOR TO RULE 26(f) CONFERENCE**

I, Shelby P. Rokito, hereby declare under penalty of perjury as follows:

1. I am an associate at the firm Fross Zelnick Lehrman & Zissu, P.C. (“Fross Zelnick”), counsel for Plaintiff Atlus Co., Ltd. (“Atlus” or “Plaintiff”) in the above-captioned action. This Declaration is submitted in connection with Plaintiff’s Motion for Leave to Serve Third-Party Subpoenas prior to the conference required by Federal Rule of Civil Procedure 26(f) (the “Motion”). I make this declaration based on my personal knowledge and on my review of the documents attached hereto. The statements herein are made to the best of my knowledge and belief.

2. This action arises out of and concerns Defendants' infringement of Atlus' copyright in the *Shin Megami Tensei: Imagine* video game (the "Imagine Game") and Atlus' original website associated with its *Imagine* Game (the "Imagine Website").

3. Atlus has discovered Defendant John Doe 1's website operated at <http://www.rekuemu.net/> (the "Infringing Website"), which copies nearly every aspect of Atlus' original *Imagine* Website. Moreover, the Infringing Website contains a link to download a game that is nearly identical to Atlus' *Imagine* Game (the "Infringing Game"). Once the Infringing Game is downloaded, the user is automatically connected to Defendant John Doe 2's "COMP_hack server" (the "Infringing Server") that is hosted on the GitHub, Inc. platform ("GitHub") and which enables the user to then play the Infringing Game online simultaneously with others.

4. Neither the Infringing Website nor the GitHub webpage where the Infringing Server is maintained contains the Defendants' names, physical addresses, telephone numbers or other personally identifying information. Moreover, Atlus has not located any business entity named "Rekuemu Games" or "Rekuemu."

5. Attached hereto as **Exhibit A** is a true and correct printout from *host.io*—a publicly-available website that provides domain name system (DNS) data—showing the DNS information for <http://www.rekuemu.net/>. As can be seen in Exhibit A, the Internet Service Provider ("ISP") for the Infringing Website is Deluxe Corporation d/b/a "ColoCrossing" and ColoCrossing has assigned Defendant John Doe 1 a specific Internet Protocol ("IP") address of 107.173.255.33. This IP address provides ColoCrossing with sufficient information to identify the relevant account/subscriber.

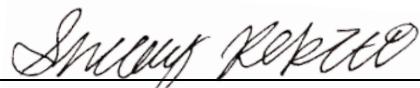
6. Additionally, it has not been possible, even after contacting GitHub, to identify Defendant John Doe 2. I previously sent an email asking GitHub if it would voluntarily provide information sufficient to identify one of its users for purposes of commencing a lawsuit. In response, GitHub stated that its policy is not to disclose user information in connection with a civil action in the absence of “a valid subpoena, civil investigative demand, court order, search warrant, or other similar valid legal process.” Attached as **Exhibit B** is a true and correct copy of this email correspondence.

7. Atlus has no way of obtaining information from ColoCrossing or from GitHub to identify Defendants at this time short of seeking and obtaining the limited discovery requested in the Motion.

8. Attached hereto as **Exhibit C** is a true and correct copy of an April 8, 2021 Order issued by Judge Rossie D. Alston, Jr. of the United States District Court for the Eastern District of Virginia in *Millennium Funding, Inc., et al., v. Wicked Technology Ltd., et al.*, 21-CV-282 (RDA)(TCB), in which Judge Alston granted Plaintiffs’ request for limited expedited discovery via a subpoena directed to GitHub sufficient to learn the identities of John Doe defendants.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 18th day of March, 2022 in New York, New York.



Shelby P. Rokito